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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term 1955

No. 162

EAST TEXAS MOTOR FREIGHT LINES, INC., GILLETTE MOTOR TRANSPORT, INC., JONES TRUCK LINES, INC., AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL., *Appellants*

v.

FROZEN FOOD EXPRESS, SECRETARY OF AGRICULTURE OF THE UNITED STATES, ET AL., *Appellees*

Appeal from the United States District Court for the Southern District of Texas, Houston Division

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

In accordance with Rule 15 of the Revised Rules of the Supreme Court of the United States, East Texas Motor Freight Lines, Inc., Gillette Motor Transport, Inc., Jones Truck Lines, Inc. American Trucking Associations, Inc., The Common Carrier Irregular Route Conference of American Trucking Associations and The Contract Carrier Conference of American Truck-

ing Associations, all intervenors in defense of the order of the Interstate Commerce Commission in the Court below, present this their statement as to Jurisdiction, and in support thereof, respectfully state:

OPINIONS BELOW

(a) The opinion of the United States District Court for the Southern District of Texas, Houston Division, is reported at 128 F. Supp. 374. That opinion is reprinted herein as Appendix "A".

The report and order of the Interstate Commerce Commission, which was the subject matter of the suit in the lower court, is reported at 62 M.C.C. 646. That report is reprinted herein as Appendix "B".

JURISDICTION

(b) (i) Appellee, Frozen Food Express, instituted the suit before the United States District Court on August 2, 1954, under the provisions of Sections 1336, 1398, and 2321 to 2325 of the Judicial Code (28 U.S.C. 1336, 1398, 2284 and 2321 to 2325) and Section 10 of the Administrative Procedure Act (5 U.S.C. 1009).

Appellee, The Secretary of Agriculture for the United States moved for leave to intervene and filed his complaint against the Interstate Commerce Commission under the provisions of Section 205 (g) of the Interstate Commerce Act (49 U.S.C. 305 (g)), Section 10 of the Administrative Procedure Act, (5 U.S.C. 1009) and Sections 1336, 1398, 2284 and 2321 to 2325 inclusive, of the Judicial Code, (28 U.S.C. 1336,) 1398, 2284 and 2321 to 2325, and Section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291). The District Court allowed intervention by the Secretary of Agriculture.

This appeal seeks review of the action of the District Court enjoining the Interstate Commerce Commission from enforcing that portion of the Commission order requiring Frozen Food Express to cease and desist from transporting fresh and frozen dressed poultry in interstate commerce for compensation to, from and between points where the latter does not hold operating authority issued by the Interstate Commerce Commission.

(ii) The judgment on the action was entered by the District Court on February 23, 1955 and is reproduced herein as Appendix "C". Notice of Appeal to this Court was filed on April 20, 1955, with the Clerk of the United States District Court for the Southern District of Texas.

(iii) The jurisdiction of this Court is invoked under the provisions of section 1253 of the Judicial Code (28 U.S.C. 1253).

(iv) The jurisdiction of this Court is believed to be sustained by a number of decisions of this Court, including:

U. S. v. *Baltimore and Ohio R. Co.*, 333 U.S. 169; 68 S. Ct. 494; 92 L. Ed. 618

U. S. v. *Hancock Truck Lines*, 324 U.S. 774; 65 S. Ct. 1003; 89 L. Ed. 1357

Radio Corporation of America v. *U. S.*, 341 U.S. 412; 71 S. Ct. 806; 95 L. Ed. 1062.

American Trucking Ass'n. Inc., v. *U. S.*, 344 U.S. 298; 73 S. Ct. 307; 97 L. Ed. 337

STATUTE INVOLVED

The essential issues decided by the Interstate Commerce Commission and by the lower court in the proceedings giving rise to this appeal required construc-

tion and application of Section 203 (b) (6) of Part II of the Interstate Commerce Act. (49 U.S.C. 303(b)(6). A number of the provisions of the Interstate Commerce Act, (49 U. S. Code, 301, et seq) are involved in this appeal, including 203(b)(6), 206(a), 209(a), and 222(b) (49 U.S.C. 303(b)(6), 306(a), 309(a) and 322(b)). The National Transportation Policy and certain terms of Section 203(b)(6), being directly before this court for interpretation and application, are set forth verbatim.

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. *All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.* (Emphasis added)

The Agricultural Commodity Exemption

Title 49 U.S. Code Section 303 (b)(6):

> Nothing in this part, except the provisions of Section 204 relative to qualifications, and maximum hours of service of employees, and safety of operation or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation * * *.

QUESTIONS PRESENTED

(c) The questions presented by this appeal are:

(1) Whether the United States District Court erred in holding that fresh and frozen dressed poultry are agricultural products and not manufactured products thereof, and, therefore within the exemptive language of Section 203(b)(6) of the Interstate Commerce Act.

(2) (a) Whether the United States District Court exceeded its authority in setting aside, in part, an order of the Interstate Commerce Commission which was supported by adequate findings of fact, in turn supported by substantial evidence and correct conclusions of law.

(b) Subsidiary to the preceding questions is whether the Commission's order entered in Docket No. MC-C-1605—*East Texas Motor Freight Lines, Inc. et al.* v. *Frozen Food Express*, 62 M.C.C. 646 is supported by substantial evidence, adequate findings of fact and correct conclusions of law.

(3) Whether the United States District Court erred in failing to sustain the Interstate Commerce Commission's finding of fact that fresh and frozen dressed poultry constituted "manufactured" products of an agricultural commodity and hence do not fall within the exemption of Section 203(b)(6) of the Interstate Commerce Act.

STATEMENT OF THE CASE

On December 23, 1953, East Texas Motor Freight Lines, Gillette Motor Transport, Inc., and Jones Truck Lines, Inc., appellants herein, pursuant to the provisions of Section 204(c) of Part II of the Interstate Commerce Act (49 U.S.C. 304(c)), filed with the Interstate Commerce Commission their complaint alleging that Frozen Food Express, appellee herein, was engaged in the for-hire interstate transportation of fresh and frozen meats, meat products, and dressed poultry, to, from, and between points in the United States not authorized in its certificates of public convenience and necessity. The Commission was requested to issue an order requiring Frozen Food Express to cease and desist from the allegedly unlawful operations. On February 25, 1954, all parties to the complaint proceeding before the Commission submitted a stipulation of facts, accompanied by certain documentary evidence in exhibit form. The stipulated facts and exhibits constituted the record both before the Commission and the District Court.

The ultimate issue before the Commission was whether the operations complained of came within the exemption provisions of section 203(b)(6) and could, as a result, be performed lawfully in the absence of a

certificate of public convenience and necessity or permit from the Commission. By report, dated July 13, 1954 (Appendix B), the Commission found and concluded:

> (1) that the exemption of vehicles used in carrying "ordinary livestock" does not extend to fresh or frozen meats, the products of the slaughter of such livestock; (2) that the exemption of vehicles used in carrying "agricultural (including horticultural) commodities (not including the manufactured products thereof)" does not embrace vehicles used in carrying ordinary livestock in view of the specific exemptions in the same section of vehicles used in carrying that commodity; and (3) that the exemption of vehicles used in carrying "agricultural (including horticultural) commodities (not including manufactured products thereof)" does not in any event extent to vehicles used in carrying either fresh or frozen meat or fresh or frozen dressed poultry.

In accordance with its findings and conclusions, the Commission entered an order requiring the defendant Frozen Food Express to cease and desist from all motor carrier operations in interstate and foreign commerce found in the report of the Commission to be unlawful.

On August 2, 1954, appellee Frozen Food Express instituted an action in the court below in which it sought to have set aside and annulled in its entirety the order of the Commission. In that suit no attack was made on the Commission's action with respect to the adequacy of the Commission's findings nor the sufficiency or substantiality of the evidence. The sole contention was that the Commission erred as a matter of law in its construction and application of the pro-

visions of 203(b)(6). At the trial below, the Interstate Commerce Commission, together with appellants herein and other intervening defendants including certain railroads, defended the Commission's order; however, the statutory defendant, the Attorney General of the United States, refused to defend the action of the Commission and joined the intervening plaintiff, the Secretary of Agriculture, in the latter's contention that the provisions of the statute in question should have been construed by the Commission so as to exempt from the certificate requirements of the Act motor vehicles engaged in the transportation of fresh and frozen meat and fresh and frozen poultry.

The court below consolidated for consideration and disposition the instant proceeding with a companion case, also styled *Frozen Food Express, et al,* v. *U.S., et al,* and docketed in the District Court as Civil Action No. 8285. The lower court's opinion in the latter proceeding is reprinted herein as Appendix "A". It should be noted that the decision of the District Court in the companion case also has been appealed to this Court.

As may be seen from Appendix "A", the lower court agreed with the Interstate Commerce Commission in the latter's holding that motor vehicles engaged in interstate for-hire transportation of fresh and frozen meat and meat products were not within the exemptive language, but on the strength of *I.C.C.* v. *Kroblin,* 133 F. Supp. 599; 212 F. 2d 555, refused to accept the Commission's determination with respect to fresh and frozen dressed poultry and accordingly set aside that part of the Commission's order restraining the plaintiff from transporting dressed poultry in the absence of authority from the Commission.

THE QUESTIONS ARE SUBSTANTIAL

(a) The Need for Certainty

Among other issues, this appeal presents to the court a question requiring definitive interpretation and application of the language of an important section of the Interstate Commerce Act. The precise question presented is whether fresh and frozen dressed poultry is an "agricultural commodity" and not a "manufactured product thereof." Whether the vast amount of processed poultry now moving by motor carrier in interstate commerce is exempt from the certificate and economic regulation of the Interstate Commerce Commission depends entirely upon this court's final resolution of the question stated. The statutory terms involved have been generally recognized by the lower federal courts, the Interstate Commerce Commission, the executive departments of the government, and by those members of the public affected by the statute as ambiguous in the extreme and immensely difficult of interpretation. The District Court in *I.C.C.* v. *Weldon*, 90 F. Supp. 873 understated the situation in observing: (page 875) "The problem is not entirely free from difficulty. * * * " A review of the administrative and judicial proceedings requiring construction of the exemptive language reveals that the words of the statute have provoked not only confusion and uncertainty among members of the regulated transportation industry but they have also given rise to sharp differences in the application of the law by the executive and legislative agencies of the government. Notwithstanding the fact that Section 203(b)(6) of the Interstate Commerce Act has been law for almost two decades, the uncertainty, doubt and confusion concerning its meaning and scope, rather than diminishing during

that period of administration, has constantly increased. There now exists greater doubt than ever before as to what commodities are embraced within the statutory terms. This Court was requested by the Interstate Commerce Commission during this term, by a petition for writ of certiorari in *I.C.C.* v. *Kroblin*, case No. 264 to reduce the area of uncertainty and doubt as to the scope of the exemption. However, the petition for writ of certiorari was denied on October 14, 1954 — U.S. — 99 L. ed. (Advance p. 35). As a result, the uncertainties created by the United States District Court for the Northern District of Iowa and the United States Court of Appeals for the Eighth Circuit by their opinions in *I.C.C.* v. *Kroblin*, 90 F. Supp. 3 and 212 F. (2d) 555 have led to additional litigation both before the Interstate Commerce Commission and the federal courts in which the moving parties seek to further broaden the so-called agricultural commodity exemption. For example, there is presently pending before the Interstate Commerce Commission an application proceeding entitled *Application of W. W. Hughes, d/b/a W. W. Hughes Refrigerated Service*, MC-105782, Sub 3. The applicant, contending that the operations proposed are exempt and therefore do not require a certificate, has moved that the Commission dismiss the application. In support of the applicant's motion to dismiss, he has urged the Commission on the authority of the *Kroblin* decision to hold that such food products as frozen prepared fruit and vegetables (including frozen french fried potatoes and frozen candied sweet potatoes), frozen meats (including frozen hamburger patties and buttered beef steaks), frozen fish and frozen seafood products (including deviled crabs, fried scallops, fried shrimp, fried fish fillets, fish sticks and other fish products), are unmanufactured.

During the pendency of the time-consuming and expensive proceedings of the type just described, the non-regulated applicant parties continue to participate in the transportation of the questioned commodities and divert such traffic from those motor carriers who have acquired certificates or permits from the Commission. Because of the uncertain and unsatisfactory state of the law, the regulated carriers know not whether they can lawfully depart from published tariffs and operate beyond the scope of their authorities. At the same time, however, they are powerless to protect their operations and franchises as well as their established "good-will" with the shipping public for the reason that the Department of Justice is unwilling to accept the position of the Commission and enforce the certificate requirements of the Act through criminal prosecutions. Shippers of the questioned commodities are experiencing related problems. So as to remain on equal footing with competitors they naturally desire to take advantage of non-tariff rate situations brought about through the collapse of regulation, yet some are understandably reluctant to go to unregulated carriage in the absence of assurance that non-regulated transportation is lawful and here to stay. Moreover, it can be assumed that the unrest and uncertainty among both carriers and shippers will remain so long as the Interstate Commerce Commission adheres to the position stated in its report supporting the order here under review that "until a *final* decision contrary to the findings in the exemption case is reached by the courts, we adhere to the conclusion that the transportation of fresh and frozen meats and fresh and frozen dressed poultry are subject to the certificate and permit requirements of the Act." (Appendix B)

While the gravity of the situation generally may be sensed from the facts immediately above stated, the importance of the issues presented on this appeal can best be realized through a review of the history of the Interstate Commerce Commission's administration of the section with respect to poultry and by more detailed reference to the *Kroblin Case*.

(b) History of Commission Administration—1935-1952

The Interstate Commerce Commission, during the entire course of its administration of Part II of the Interstate Commerce Act, has held that dressed poultry is not an exempt agricultural commodity. In *Frank Battaglia Common Carrier Application*, 18 M.C.C. 167 (May 1939), the Commission adopted the findings and conclusions recommended by a joint board which denied the grant of the application because of applicant's failure to prove need for the proposed operation, but concluded that butter, cheese, and dressed poultry were manufactured commodities for which authority was required. Subsequent to the *Battaglia Case*, the Commission, in *Monarch Egg Corporation Contract Carrier Application*, 26 M.C.C. 615 (November 1940), held that the transportation of dressed poultry was subject to the certificate requirements of Part II of the Act. The Commission reached similar conclusions in *Ollin W. Allen Common Carrier Application*, 28 M.C.C. 26 (February 1941) and *R. C. McCarthy Contract Carrier Application*, 32 M.C.C. 615 (March 1942).

The *Monarch Egg Case, supra*, was reopened by the Commission at the request of the Department of Agriculture and after further hearing the Commission sustained its prior conclusions and again held that dressed poultry could not be considered an unmanufactured

agricultural commodity. *Monarch Egg Corp. Contract Carrier Application,* 44 M.C.C. 15 (October 1944). In support of its conclusions the Commission stated at page 19:

> We found in the prior report that the term "ordinary livestock" embraced poultry as well as cattle, horses, sheep, etc., but that dressed poultry, picked but not drawn, "does not come within the term livestock." In view of the definition of ordinary livestock set forth in Section 20 (11), which the legislative history above-discussed indicates should be applied also to the term as used in Section 203(b)(6), it is apparent that poultry in any condition is not "ordinary livestock". However, they are raised on the farm, and clearly are included within the broader description "agricultural commodities." It therefore becomes necessary to determine whether poultry which have been killed and picked but not drawn are unmanufactured agricultural commodities within the meaning of the present exemption.
>
> As in the case of shelled pecans and walnuts, there is a complete absence of any showing of the customs and practices obtaining in the marketing of poultry, but certain facts in this connection are so well known that we may take cognizance of them for the purpose of the present determination. It is *common knowledge that, generally, farmers do not kill and pick poultry in marketing it.* Probably without exception, or at most with rare exceptions, the *commercial killing and dressing of poultry is done by meat-packing companies or by special poultry packers. Its subsequent transportation is under refrigeration. As such, it can no longer be considered an unmanufactured agricultural commodity.* (Emphasis added)

The next reported decision by the Commission was issued in *Determination of Exempt Agricultural Com-*

modities, 52 M.C.C. 511, where it was held by the Commission, at page 557, as follows:

> ". . . we find that the term 'agricultural commodities (not including manufactured products thereof)' as used in Section 203 (b) (6) of the Interstate Commerce Act means: Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits and nuts); forest products; *live poultry* and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment have been so changed as to possess new forms, qualities, or properties, or result in combinations.
>
> "We find that the term 'agricultural commodities (not including manufactured products thereof)' as used in Section 203 (b) (6) includes . . . (9) *live poultry,* namely, chickens, turkeys, ducks, geese, and guineas; . . ." (Emphasis added)

The foregoing cases represent all of those in which the Interstate Commerce Commission, in reported decisions, gave specific consideration to dressed poultry. However, the Commission's interpretation of an application of the provisions of Section 203(b)(6) was continuous and consistent in a countless number of motor carrier application proceedings not reported in the permanent bound volumes of the Commission. Operating authorities involving the transportation of dressed poultry were obtained by a number of motor carriers pursuant to applications filed with and heard by the Interstate Commerce Commission and supported by evidence submitted on behalf of all of the most important meat packers of the country as well as many of the most important commercial poultry processors.

There is nothing revealed in unreported cases of the Commission which would indicate that any of the shipper interests or any carrier applicant ever contended prior to or since the *Determination Case* that dressed poultry should be classified as a so-called exempt commodity. The contention that dressed poultry was within the purview of the exemption was not advanced with any vigor until the year 1948, at which time the Secretary of Agriculture alone urged the Commission to reverse its long-standing position with respect to dressed poultry and classify it as exempt. At this point it is appropriate to point out that no individual commercial poultry processor intervened in the *Determination Case* for the purpose of urging the acceptance of the views of the Secretary of Agriculture with respect to the classification of dressed poultry.

Since no immediate attack had been made on the conclusions reached by the Commission in the *Determination Case,* it had been generally assumed that any question with respect to whether motor vehicles transporting dressed poultry were embraced within the exemptive language had been put to rest. However, on October 17, 1952, the Commission filed a complaint against Allen E. Kroblin, Inc. in the United States District Court for the Northern District of Iowa alleging that the defendant was unlawfully engaged in the transportation of New York dressed and eviscerated poultry in interstate commerce. The relief sought by the Commission was to restrain the defendant from the further performance of the operations complained of until such time as it had acquired appropriate authority from the Interstate Commerce Commission. The District Court refused to grant the injunction on the grounds that the commodities transported by the de-

fendant were unmanufactured agricultural commodities, and, on appeal, was sustained by the United States Circuit Court of Appeals. This Court denied certiorari on October 14, 1954.

Prior to the *Kroblin* decision, the Department of Justice had generally followed the Interstate Commerce Commission's interpretation of the statute with respect to poultry and had subjected to criminal prosecution a number of carriers for engaging in the transportation of dressed poultry without appropriate operating authority from the Commission. On March 19, 1948, in a criminal proceeding of the character mentioned, the United States District Court for the District of Delaware, in *U. S.* v. *Reed Trucking Co., Inc.* (not reported), the defendant was fined $250 for transporting dressed poultry without authority. The same Court on October 4, 1950, imposed fines on Reed Trucking Co., Inc. and H & H Poultry Company totaling $16,300 because the shipper had been granted rate concessions on dressed poultry traffic. Had the traffic been exempt, published rates would not have been required and the prosecutions could not have been brought successfully.

This Court's refusal to grant certiorari in the *Kroblin Case, supra*, apparently has not changed the Commission's position. As indicated earlier, however, a position contrary to that assumed by the Commission is taken by both the Department of Agriculture and the Department of Justice. Both executive departments urged the Court below to reject the holdings of the Commission in their entirety.

The existing conflict in interpretation of the statute between the Department of Justice and the Commis-

s[illegible] makes it impossible to effectively administer the provision, for while the Commission still requires carriers to obtain certificates, the Department of Justice refuses to prosecute carriers for not having certificates when transporting dressed poultry traffic.

(c) The Questions Presented Are Not Foreclosed By Prior Decisions of This Court.

Two petitions for certiorari have been presented to this Court involving questions concerning the application of Section 203(b)(6). The first case, *Weldon* v. *I.C.C.*, 188 F. 2d 367; 342 U.S. 827, presented the question of whether motor vehicles used to transport shelled raw peanuts were within the exemption. The second case, *I.C.C.* v. *Kroblin, supra,* presented the question of whether motor vehicles transporting New York dressed poultry were within the exemption. In both cases, this Court denied certiorari leaving the Court of Appeals' decisions in effect. Appellants contend that those decisions are in direct conflict.

In accordance with the decisions of this Court which caution against drawing inferences as to the merits of cases from denials of petitions for writs of certiorari, appellants contend that the cases above cited certainly have not foreclosed the question presented from consideration by this Court. Authority for the position assumed by appellants is contained in *Jurisdiction of the Supreme Court of the United States* by Robertson and Kirkham, 1951 Edition, where it is stated: (Page 603)

> The fact that the Supreme Court does not sit as a court of errors and appeals in passing upon applications for writs of certiorari is pointedly emphasized by its practice of giving no reasons, in most cases, for its refusal of the applications. *Gaines v. Washington,* 277 U. S. 81, 87; by its

> general practice of entering an order denying the petition and not dismissing it, even though the case be one of which the Supreme Court has no jurisdiction; and by its repeated warnings to the bar that *the denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times, United States* v. *Carver*, 260 U. S. 482, 490. It is likewise true that a denial of a petition for writ of certiorari, without more, imports no expression of opinion as to the jurisdiction of the Supreme Court to issue the writ, *Ex Parte Bakelite Corporation*, 279 U. S. 438, 448, nor as to the jurisdiction of any other court to entertain a case.

We quote also the same authors' comments with respect to the impropriety of inferring that denial of certiorari terminates consideration of the questions involved by the Supreme Court: (page 605)

> The danger with which such indulgence in inference is attended would appear to be sufficiently demonstrated by the not inconsiderable number of cases in which the petition for certiorari has been denied on first application, but has been subsequently granted either on petition for rehearing or *sua sponte*, because of an intervening conflict of decision or because subsequent events imported into the case an element of importance it previously did not possess or because an apparent procedural defect had been cured or shown not to exist. Indeed, where counsel has relied on denials of certiorari in similar cases as a reason for failing to appeal in a subsequent case, the Court has held that such failure was not justified. *Sunal* v. *Large*, 332 U. S. 174.

(d) The Questions Presented Require for Their Resolution Plenary Consideration With Briefs on the Merits and Oral Argument

The fundamental problem presented in this case is, as earlier stated, one requiring construction of the language of the federal statute. The key terms of the provision in question are not free of ambiguity and, as a consequence, they have provoked considerable litigation before both the federal courts and the Interstate Commerce Commission. Opposing litigants in the various proceedings, conceding the existence of ambiguity in the words of the statute itself, have resorted to the legislative history of the section to support their respective claims as to Congressional intent. Unfortunately, however, the legislative history contains no greater certainty than the statutory terms themselves. It is therefore necessary and appropriate that this Court have the advantage of considering all factors and circumstances leading to the enactment of Part II of the Interstate Commerce Act and particularly the agricultural exemption. Since the provision here in question is but a segment of a complete scheme of regulation for motor transportation in interstate commerce, this Court should have the opportunity of considering the issues presented as they relate to the entire pattern of regulation. Appellants submit that to achieve that end, briefs on the merits and oral argument are necessary.

This case is presented to the Court on appeal and appellants believe that the matters already asserted justify full consideration by the Court. In addition, however, they desire to emphasize that this case has a number of aspects which, based on prior decisions of this Court, would even justify the grant of a writ of certiorari. Those aspects are indicated below.

(1) THERE IS CONFLICT ON THE QUESTION PRESENTED AMONG THE FIFTH, SIXTH AND EIGHTH CIRCUIT COURTS OF APPEAL.

Customarily this Court has entertained cases from a lower federal court where it has been shown that the decision sought to be reviewed is in conflict with prior decisions of one or more other Circuit Courts of Appeal. Appellants contend that an analysis of the District Court's decision, although in agreement with the Eighth Circuit in the *Kroblin Case*, is in conflict or at least substantially inconsistent in theory with the *Weldon Case* in the Sixth Circuit Court of Appeals and with *Southwestern Trading Company* v. *U.S.*, 208 F. 2d 708, from the Fifth Circuit Court of Appeals.

(2) THE DISTRICT COURT'S DECISION REVERSES SETTLED ADMINISTRATIVE CONSTRUCTION.

Long standing administrative construction by an agency charged with the enforcement of the statute in question has been given great weight by the federal courts and where a lower court has disagreed with administrative interpretation this Court has frequently granted certiorari for the purpose of returning certainty to the law. *Commissioner* v. *South Texas Lumber Company*, 333 U.S. 496, 499-500; 68 S. Ct. 695; 92 L. Ed. 831. It has been shown that at least with respect to poultry, the Interstate Commerce Commission, for a period of more than 15 years, has consistently construed the provisions of Section 203 (b)(6) so as to require authority for its transportation.

(3) Dispositive Action on the Questions Presented Will Tend to Lessen Further Litigation Before the Interstate Commerce Commission and the Federal Courts.

In *Alcoa S. S. Co.* v. *U.S.*, 338 U.S. 421, 423; 70 S. Ct. 190; 94 L. Ed. 225, this Court stated:

> "We granted certiorari because determination of the issue raised here will guide adjustment of a large body of similar claims now pending."

In similar circumstances, certiorari was granted in *Ludecke* v. *Watkins*, 335 U.S. 160, 162; 68 S. Ct. 1429; 92 L. Ed. 1881, where it was stated by the Court (footnote 2, page 162):

> "We are advised that there are 530 alien enemies ordered to depart from the United States, whose disposition awaits the outcome of this case."

The foregoing cases quite clearly indicate that the reason for fully considering the matters presented was that final resolution by the Supreme Court of the questions involved would tend to eliminate further litigation in the lower courts. Appellants submit that the Supreme Court, by fully disposing of the interpretation question here present, will effectively check a substantial part of the litigation now anticipated under Section 203(b)(6).

CONCLUSION

PROBABLE JURISDICTION SHOULD BE NOTED.

Respectfully submitted,

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Certificate of Service

In compliance with Rules 13 (2) and 33 (1), (2) and (3-b) of the Revised Rules of the Supreme Court of the United States, I, Francis W. McInerny, one of the attorneys for the several Appellants on whose behalf the foregoing Jurisdictional Statement is submitted, and a Member of the Bar of the Supreme Court of the United States, hereby certify that I have served copies of the foregoing document on counsel for the several parties to this proceeding, as indicated below.

This, the 17th day of June, 1955.

FRANCIS W. McINERNY

Copies served in duly addressed envelopes with first-class postage prepaid:

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Esperson Building
Houston, Texas

Carl L. Phinney, Esquire
Phinney and Hallman
617 First National Bank Building
Dallas, Texas

W. H. Vaughan, Jr., Esquire
Fulbright, Crooker, Freeman, Bates and Jaworski
Second National Bank Building
Houston 2, Texas

James W. Nisbet, Esquire
Association of Western Railways
280 Union Station Building
Chicago 6, Illinois

J. C. Hutcheson, III, Esquire
Esperson Building
Houston, Texas

Marcus Whiting, Esquire
Armour and Company
Union Stockyards
Chicago 9, Illinois